

JUL 28 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

CARLOS CISNEROS HERNANDEZ;
ROCIO CISNEROS,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-76674

Agency Nos. A95-300-401
A95-300-402

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Carlos Cisneros Hernandez and Rocio Cisneros, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' order dismissing their appeal from an immigration judge's ("IJ") order denying their

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

applications for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's finding that the petitioners failed to establish the requisite continuous physical presence in the United States. *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 851 (9th Cir. 2004). We review de novo constitutional challenges. *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). We deny the petition for review.

Substantial evidence supports the agency's finding that Carlos failed to establish ten years of continuous physical presence because there are inconsistencies within his own testimony and between the documentary evidence regarding where he first lived upon entering the United States. *Cf. Lopez-Alvarado*, 381 F.3d at 851-52 (continuous physical presence established where corroborating evidence was particularly strong and nothing in the record contradicted the alien's claim).

The petitioners' due process contention is unavailing because the proceedings were not "so fundamentally unfair that [they were] prevented from reasonably presenting [their] case." *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (citation omitted).

It is uncontested that Rocio failed to demonstrate she had ten years of continuous physical presence in the United States. She nevertheless requests that

if Carlos's case is remanded, her case also be remanded. Because we deny Carlos's petition for review, we deny Rocio's request as moot.

PETITION FOR REVIEW DENIED.